

**NEW JERSEY DIVISION OF TAXATION  
TECHNICAL BULLETIN**

---

**DISTRIBUTION:**    **C, INCLUDING FIELD**                      **TB-48**

**FOR RELEASE:**    **INTERNAL ONLY \_\_\_\_\_**                      **ISSUED: 8/20/02**  
                         **OUTSIDE DIVISION   X  \_\_\_\_\_**

**TAX:**                      **SALES AND USE TAX**

**TOPIC:**                      **MOBILE TELECOMMUNICATIONS SERVICES**

On July 30, 2002, Governor James E. McGreevey signed Chapter 45 of the Laws of New Jersey 2002. This legislation included amendments to the New Jersey Sales and Use Tax Act which bring the existing provisions on mobile telecommunications services into compliance with the federal "Mobile Telecommunications Sourcing Act" 4 U.S.C. s.124 (Public Law 106-252), referred to as MTSA. The amendments to the Sales and Use Tax Act are effective for customer bills issued after August 1, 2002.

The MTSA enacted a uniform method for sourcing mobile telecommunications services for sales tax purposes. It also provides standards by which the *primary place of use* will be determined and provides protections to mobile telecommunications service providers who follow its provisions.

**New Sales Tax Sourcing Rules**

Prior to the enactment of the new legislation, home service providers of mobile telecommunications services sourced their receipts to the billing address of the customer. Sales tax was imposed on both interstate and intrastate telecommunications services based on the location of the service address in New Jersey as required under the U.S. Supreme Court's 1989 decision in *Goldberg v. Sweet*. 488 U.S. 252 (1989). Any call that originated or terminated in this State was taxed if the billing or service address was in this State.

The new legislation changes the way mobile telecommunications services are taxed by sourcing all calls to a *place of primary use*, regardless of origination or termination of the service or the intrastate character of the call. The new method assumes that all wireless calls are made at the customer's residential or business street address, whichever is the *place of primary use*, and allows taxing jurisdictions to tax all the calls charged to that place of primary use. No other state can tax the mobile calls, even if the call originates or terminates in that state. Accordingly, the mobile telecommunications customer's place of primary use is considered the point of delivery of the mobile telecommunications service, and controls the tax incidence for purposes of state sales taxes.

In summary, if you reside in New Jersey, all cellular calls, regardless of where they are made or where the person called is located, will be subject to 6% New Jersey sales tax.

### **Sales Tax Rules for Computing Receipts from Charges for Mobile Telecommunications Services**

The law specifies that receipts from the sale of mobile telecommunications services provided by a home service provider, which are taxable under N.J.S.A. 54:32B-3(f)(2), include charges for commercial mobile radio service, and ancillary property and services, including, but not limited to dial tone, pagers and paging services, voice service, directory information, call forwarding, caller-identification, and call-waiting. These services are included within the federal definition of mobile telecommunications services and will be taxed according to the MTSA sourcing method.

### **Administrative and Procedural Provisions for Sales Tax**

Certain administrative and procedural provisions of the MTSA have been incorporated into the New Jersey Sales and Use Tax Act. In general, these provisions provide *safe harbors* to service providers when they use a state's database to assign a mobile telecommunications customer to a place of primary use and then determine the tax rate within that jurisdiction. In New Jersey, a database for home service providers is not necessary because the tax rate on mobile telecommunications throughout New Jersey is six (6) percent.

### **The new legislation amended the New Jersey Sales and Use Tax Act to add the following definitions from the federal law:**

*Mobile telecommunications service* means a commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

*Place of primary use* means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer; and within the licensed service area of the home service provider.

### **In addition, for sales tax purposes, the following definitions were amended:**

*Property and services the use of which is subject to tax* was amended to include mobile telecommunications services provided to a customer with a place of primary use in this State.

*Telecommunications* was amended to include mobile telecommunications service and to delete cellular mobile or portable telephone, specialized mobile or portable pager or paging service.

*Interstate telecommunication* was amended to mean any telecommunication that originates or terminates inside this State, including international telecommunication, that is not mobile telecommunications service.

*Intrastate telecommunication* was amended to mean any telecommunication that originates and terminates within this State that is not mobile telecommunications service.

**The new legislation also amended the Sales and Use Tax Act to include, by reference and incorporation, the following definitions from the MTSA:**

*Customer* means the person or entity that contracts with the home service provider for mobile telecommunications services. However, in determining the place of primary use, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services is the customer.

*Customer* does not include either:

- A reseller of mobile telecommunications service; or
- A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

*Mobile telecommunications service* does not include:

- Prepaid telephone calling service; or
- Air-ground radio telephone service, defined as a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

*Commercial mobile radio service* means a mobile service or the functional equivalent of a mobile service that is:

- Provided for profit ( i.e., with the intent of receiving compensation or monetary gain);
- An interconnected service; and
- Available to the public or a substantial portion thereof.

*Mobile service* means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

- Both one-way and two-way radio communications services;
- A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
- Any service for which a license is required in a personal communications service under Part 24 of Title 47 of the Code of Federal Regulations in effect on June 1, 1999.

*Home service provider* means the facilities-based carrier or reseller, with which the customer contracts for the provision of mobile telecommunications services.

*Licensed service area* means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

*Reseller* means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. Reseller does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

*Serving carrier* means a facilities-based carrier providing mobile telecommunications service to a customer outside the home service provider's or reseller's licensed service area.

*Taxing jurisdiction* means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.